Montana Administrative Register Notice 36-22-174 **No. 11 06/06/2013**

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BEFORE THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION OF THE STATE OF MONTANA

In the matter of the amendment of ARM 36.12.102, 36.12.103, 36.12.905, 36.12.1301, 36.12.1702, 36.12.1902 and the adoption of New Rule I regarding water right permitting	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND ADOPTION

To: All Concerned Persons

1. On June 26, 2013, at 10:00 a.m., the Department of Natural Resources and Conservation will hold a public hearing in the Fred Buck Conference Room (bottom floor), Water Resources Building, 1424 Ninth Avenue, Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than June 24, 2013, to advise us of the nature of the accommodation that you need. Please contact Millie Heffner, Montana Department of Natural Resources and Conservation, P.O. Box 201601,1424 Ninth Avenue, Helena, MT 59620-1601; telephone (406) 444-0581; fax (406) 444-0533; e-mail mheffner@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

36.12.102 FORMS (1) The following necessary forms for implementation of the act and these rules are available from the Department of Natural Resources and Conservation, P.O. Box 201601, Helena, Montana 59620-1601 and its Water Resources regional offices, or on the World Wide Web at http://dnrc.mt.gov/wrd/default.asp. The department may revise as necessary the following forms to improve the administration of these rules and the applicable water laws:

(a) through (ae) remain the same.

(af) Form No. 648, "Petition to Subordinate a State Water Reservation"; ~~and~~

(ag) Form No. 649, "Surface Water Measurement Data Form"~~.~~;

(ah) Form No. 650, "Temporary Lease of Appropriation Right";

(ai) Form No. 651, "Petition to Modify a Permit or Change Authorization"; and

(aj) Form No. 652, "Petition for Net Depletion Zone".

AUTH: 85-2-113, MCA
IMP: 85-2-113, 85-2-306, 85-2-311, 85-2-314, 85-2-316, 85-2-402, 85-2-424, 85-2-427, 85-20-401, MCA

REASONABLE NECESSITY: The 2013 Legislature passed several bills that impact water right permitting. The 2013 Legislature passed HB 37 which will be codified as 85-2-427, MCA (Chapter 236, 2013 Laws of Montana). HB 37 created a mechanism for water right holders to temporarily lease their water rights and provided for rulemaking by DNRC to implement the statute. Form No. 650 is needed to obtain the necessary information from water right owners who wish to

temporarily lease their water right(s). HB 106 (Chapter 335, Session Laws of Montana) contains a provision for permittees or holders of a change authorization to petition the department to modify or remove a condition of approval or reduce the amount of the permit or change authorization. Form No. 651 is needed to obtain the necessary information from the permittees and holders of change authorizations who would like to modify their permit or change authorization. SB 346 creates a process to define a stream depletion zone through a petition to the department. Form No. 652 is needed to obtain the necessary information from the petitioners who wish to identify a stream depletion zone.

36.12.103 FORM AND SPECIAL FEES

(1) remains the same.

(2) The department will assess the following filing fees:

(a) through (w) remain the same.

(x) $200 for Form No. 646, Geothermal Heating/Cooling Notice of Completion; ~~and~~

(y) $125 for Form No. 647, Notice of Completion of Emergency Fire Protection Development~~.~~;

(z) $200 for Form No. 650, Temporary Lease of Appropriation Right;

(aa) $400 for Form No. 651, Petition to Modify a Permit or Change Authorization; and

(ab) $750 for Form No. 652, Petition for Net Depletion Zone.

(3) and (4) remain the same.

AUTH: 85-2-113, MCA

IMP: 85-2-113, 85-2-306, 85-2-311, 85-2-312, 85-2-314, 85-2-402, 85-2-427, 85-2-436, 85-20-401, MCA

REASONABLE NECESSITY: Pursuant to 85-2-113, MCA, the department may prescribe fees for public service provided under the Montana Water Use Act (Title 85, MCA). The department evaluated processing costs for the new forms to determine the fee amounts for forms 650, 651, and 652. The proposed fees are expected to generate the following revenues (for a total of $14,050 per year) and affect the following numbers of individuals: (1) Form No. 650: $10,000 per year, approximately 50 people; (2) Form No. 651: $1600 per year, approximately four people; (3) Form No. 652: $1500 per year, approximately two people.

36.12.905 HORSE CREEK CONTROLLED GROUNDWATER AREA

(1) There is designated a Horse Creek Controlled Groundwater Area. Horse Creek Controlled Groundwater Area (HCCGWA) means an area of approximately 7995 acres or 12 square miles located southwest of Absarokee, Montana, and is generally described as follows:

(a) remains the same.

~~(b) the legal land descriptions are in the following table:~~

~~Quarter Section~~	~~Section~~	~~Township~~	~~Range~~
~~S2 SESE~~	~~33~~	~~3S~~	~~18E~~
~~S2 S2~~	~~36~~	~~3S~~	~~18E~~
~~All~~	~~10, 15, 16, 21~~	~~4S~~	~~18E~~
~~Portions of~~	~~9, 11, 12,14, 20, 22, 29~~	~~4S~~	~~18E~~
~~W2~~	~~1~~	~~4S~~	~~18E~~
~~E2, E2SW~~	~~4~~	~~4S~~	~~18E~~
~~NWNW~~	~~23~~	~~4S~~	~~18E~~
~~N2~~	~~28~~	~~4S~~	~~18E~~
~~NE, NW NW~~	~~29~~	~~4S~~	~~18E~~
~~S2 SW, SW SE~~	~~36~~	~~4S~~	~~18E~~

(c) remains the same but is renumbered (b).

(2) through (8) remain the same.

AUTH: 85-2-506, 85-2-508, MCA
IMP: 85-2-506, 85-2-508, MCA

REASONABLE NECESSITY: The table is redundant as it was generated based on information already contained in ARM 36.12.905(1) and (2). Additionally, the table contains errors that are inconsistent with (1) and (2).

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36.12.1301 PERMIT AND CHANGE APPLICATION ACCEPTANCE

(1) remains the same.

(2) A change application will be returned to the applicant if any of the following is not completed on the application form:

(a) through (c) remain the same

(d) the applicant's signature;

(~~d~~e) a map conforming to standards identified in ARM 36.12.111; and

(e) remains the same but is renumbered (f).

AUTH: 85-2-113, MCA
IMP: 85-2-310, MCA

REASONABLE NECESSITY: The amendments correct a typographical error which resulted in a nonexistent ARM citation; and, add the requirement of the applicant's signature, which is required in section (1) of the rule, but was inadvertently left out of section (2) when the rules were last amended in October 2012.

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36.12.1702 PERMIT APPLICATION CRITERIA - PHYSICAL SURFACE WATER AVAILABILITY

(1) and (2) remain the same.

(3) If actual flow rate and volume data are not available to estimate the ~~monthly~~ median of the mean monthly flows, then the department shall use an accepted method for estimating surface water flow rates and volumes in conjunction with discharge measurements to validate the estimation technique used. Some accepted methods are listed in (5).

(4) When stream flow gaging station data are not available and monthly median flow estimation techniques are used, the following stream discharge data must be collected:

(a) remains the same.

(b) If it is not possible to take measurements every month due to high spring flow conditions or other limiting conditions approved by the department, at least ~~one~~ three measurements must be collected during the ~~lowest flow~~ period of proposed appropriation. These measurements should be taken during each of the following periods:

(i) high flow conditions (May through June for mountain streams and March through May for prairie streams);

(ii) following runoff and prior to baseflow (July through August for mountain streams and May through June for prairie streams); and

(iii) baseflow (August through March for all streams).

(c) remains the same.

(d) A request for a variance from measurement requirements may be submitted for nonperennial streams. The request must be submitted in writing to the appropriate regional office.

(5) The following reports may contain accepted methods for estimating surface water flow rates and volumes:

~~(a) "Methods for Estimating Monthly Stream Flow Characteristics at Ungaged Sites in Western Montana," USGS Open-file Report 89-40;~~

(b) remains the same but is renumbered (a);

~~(c) "Stream Flow Characteristics of Mountain Streams in Western Montana," USGS Open-File Report 84-244;~~

(d) through (g) remain the same but are renumbered (b) through (e).

(~~h~~f) "Mean Annual Runoff and Peak Flow Estimates Based on Channel Geometry of Streams in Northeast and Western Montana," USGS Water Resources Investigation Report 83-4046; ~~and~~

(~~i~~g) "Estimates of Mean Monthly Stream Flow for Selected Sites in the Musselshell River Basin, Montana," USGS Water Resources Investigation Report 89-4165~~.~~;

(h) "Synthesis of Monthly and Annual Streamflow Records (Water Years 1950-2003) for

Big Sandy, Clear, Peoples, and Beaver Creeks in the Milk River Basin, Montana", USGS SIR 2005-5216;

(i) "Synthesis of Monthly Natural Flows for Selected Sites in the Musselshell River Basin, Montana, Base Period 1929-89", USGS WRIR 96-4094;

(j) "Synthesis of Natural Flows at Selected Sites in and near the Milk River Basin, Montana, 1928-89", USGS WRIR 95-4022;

(k) "Estimates of Monthly Streamflow Characteristics and Dominant Discharge Hydrographs for Selected Sites in the Lower Missouri and Little Missouri Basins in Montana", USGS WRIR 94-4098;

(l) "Streamflow Characteristics of Small Tributaries of Rock Creek, Milk River Basin, Montana, Base Period Water Years 1983-87", USGS WRIR 89-4206;

(m) "Methods for Estimating Monthly Streamflow Characteristics at Ungaged Sites in Western Montana", USGS WSP 2365; and

(n) "Streamflow Characteristics of Mountain Streams in Western Montana", USGS WSP 2260.

(6) remains the same.

AUTH: 85-2-113, 85-2-302, MCA
IMP: 85-2-302, MCA

REASONABLE NECESSITY: There was confusion by applicants what the department meant by lowest flow period, and in some cases resulted in a measurement of zero. One measurement, particularly if it is zero, is not sufficient data to use in conjunction with a measurement technique. Therefore, three new measurement criteria have been added during each of the three flow stages in order to obtain representative amounts for use with the estimation techniques. Also, the "Open File Reports" cited in (5)(a) and (c) are obsolete and have been replaced by USGS with the "Water Supply Papers" which are listed in (5)(h) through (n).

36.12.1902 CHANGE APPLICATION - HISTORIC USE

(1) and (2) remain the same.

(3) The amount of water being changed for each water right cannot exceed or increase the flow rate historically diverted under the historic use, nor exceed or increase the historic volume consumptively used under the existing use.

(a) The department may use column H in Table 1 for proposed irrigation to compare the historic consumptive use (HCU) to the amount of water being changed.

(4) through (15) remain the same.

(16) To determine the historic consumptive volume using the table, the department will complete the following steps:

(a) and (b) remain the same.

(c) identify the county in which the irrigated acres are located to determine the county management factor percentage (column F or G);

(d) multiply the IWR estimate found in column D or E by the management factor percentage in column F or G. The result is the number of inches used per irrigated acre;

(e) through (g) remain the same.

Table 1 - Montana County Weather Station IWR Data for Seasonal Alfalfa Evapotranspiration and Montana County Management Factor.

olumn A	Column B	Column C	Column D	Column E	Column F	Column G	Column H
County	Weather Station	Elevation	IWR Flood Irrigation, Wheeline & Handline Seasonal ET (inches)	IWR Center Pivot Irrigation Seasonal ET (inches)	Management Factor Percentage 1964 – 1973 (pre-July 1, 1973 HCU)	Management Factor Percentage 1973 – 2006 (post-July 1, 1973 HCU)	Management Factor Percentage 1997 – 2006 (proposed use)
averhead	Dillon	5239	18.34	20.74	63.7%	82.8%	88.3%
	Wisdom	6060	7.34	9.29		-	-
	Jackson	6480	8.35	10.30		-	-
	Lakeview	6710	8.39	10.67		-	-
	Lima	6583	13.75	16.01		-	-
ig Horn	Busby	3430	20.32	22.88	55.4%	78.7%	88.1%

	Hardin	2905	27.46	29.96		-	-
	Hysham 25	3100	20.25	22.86		-	-
	Wyola	3750	19.19	21.89		-	-
	Yellowtail Dam	3305	28.07	31.30		-	-
Blaine	Chinook	2420	20.80	23.57	58.7%	63.6%	66.0%
	Harlem	2362	21.62	24.27		-	-
oadwater	Townsend	3840	19.42	21.88	69.2%	79.5%	87.1%
	Trident	4040	20.64	23.31		-	-
Carbon	Joliet	3776	22.41	25.12	58.3%	66.8%	70.8%
	Red Lodge	5500	15.57	18.41		-	-
Carter	Ekalaka	3425	20.13	23.14	38.4%	54.7%	54.1%
	Ridgeway	3320	20.28	23.01		-	-
Cascade	Cascade 20	4600	14.12	16.63	57.3%	70.0%	78.8%
	Cascade 5	3360	17.90	20.75		-	-
	Great Falls	3675	19.78	22.55		-	-
	Neihart	4945	12.17	15.08		-	-
	Sun River	3340	18.10	20.65		-	-
houteau	Big Sandy	2700	21.52	24.37	52.5%	64.9%	77.9%
	Fort Benton	2640	21.98	24.75		-	-
	Geraldine	3130	20.30	23.27		-	-
	Iliad	2950	21.55	24.27		-	-
	Loma	2700	22.64	25.37		-	-
	Shonkin	4300	13.32	16.70		-	-
Custer	Miles City	2628	26.68	29.55	54.5%	72.0%	81.1%
	Mizpah	2480	23.80	26.57		-	-
	Powderville	2800	24.83	27.68		-	-
Dawson	Glendive	2076	26.01	28.99	56.8%	63.6%	72.0%
er Lodge	No weather station				See appropriate adjacent county	-	-
Fallon	Plevna	2780	22.48	25.34	47.6%	47.8%	47.6%
Fergus	Denton	3620	15.39	18.12	48.8%	65.8%	68.3%
	Grass Range	3490	18.93	21.93		-	-
	Lewistown	4167	15.54	18.44		-	-
	Roy	3450	19.94	22.78		-	-
	Winifred	3240	17.86	20.75		-	-
lathead	Creston	2949	14.97	17.81	87.6%	94.5%	96.6%
	Hungry Horse Dam	3160	14.66	18.06		-	-
	Kalispell	2972	16.45	19.03		-	-
	Olney	3165	12.50	15.16		-	-
	Polebridge	3600	10.20	12.50		-	-
	West Glacier	3154	13.74	16.78		-	-
	Whitefish	3100	15.74	18.61		-	-
Gallatin	Bozeman Exp Farm	4775	16.84	19.55	73.5%	92.1%	98.6%
	Bozeman MT State	4913	18.42	21.39		-	-
	Hebgen Dam	6667	10.09	12.77		-	-
Garfield	Cohagen	2710	22.36	24.99	43.4%	50.6%	46.1%
	Jordan	2661	23.58	26.32		-	-
	Mosby	2750	24.51	27.34		-	-
Glacier	Babb	4300	12.12	14.87	59.7%	73.6%	73.9%
	Cut Bank	3855	16.01	18.60		-	-
	Del Bonita	4340	14.61	17.30		-	-
	East Glacier	4810	10.60	13.26		-	-
	St Mary	4560	13.64	16.60		-	-
Golden Valley	Ryegate	4440	17.60	20.17	62.6%	65.5%	64.6%
Granite	Philipsburg	5270	12.90	15.26	86.5%	87.4%	96.6%

	Ranger Station						
Hill	Fort Assinniboine	2613	22.42	25.20	54.1%	59.8%	60.4%
	Guilford	2820	19.54	22.06		-	-
	Havre	2585	20.94	23.46		-	-
	Simpson	2815	19.67	22.13		-	-
efferson	Boulder	4904	17.08	19.47	61.0%	77.9%	81.1%
dith Basin	Moccasin Exp Station	4243	16.17	19.06	49.3%	68.0%	68.8%
	Raynesford	4220	16.14	19.05		-	-
	Stanford	4860	16.74	19.69		-	-
Lake	Bigfork	2910	17.37	20.61	55.0%	69.2%	68.7%
	Polson	2949	20.46	23.23		-	-
	Polson Kerr Dam	2730	21.37	24.08		-	-
	St Ignatius	2940	19.53	22.33		-	-
ewis & Clark	Augusta	4070	17.51	20.13	60.1%	79.0%	79.7%
	Austin	4790	15.41	17.96		-	-
	Helena	3828	20.23	22.69		-	-
	Holter Dam	3490	23.88	26.61		-	-
	Lincoln Ranger Station	4575	12.87	15.22		-	-
Liberty	Chester	3132	19.28	21.74	54.8%	65.7%	63.9%
	Joplin	3300	19.01	21.40		-	-
	Tiber Dam	2850	22.98	25.46		-	-
Lincoln	Eureka Ranger Station	2532	20.63	23.26	47.1%	56.3%	58.8%
	Fortine	3000	16.09	18.69		-	-
	Libby Ranger Station	2096	21.20	23.71		-	-
	Libby	3600	11.06	13.36		-	-
	Troy	1950	19.90	22.68		-	-
Madison	Alder	5800	14.33	16.75	65.2%	79.0%	83.3%
	Ennis	4953	17.19	19.71		-	-
	Glen	5050	17.81	20.01		-	-
	Norris	4750	20.88	23.97		-	-
	Twin Bridges	4777	16.98	19.22		-	-
	Virginia City	5770	15.57	18.13		-	-
McCone	Brockway	2630	20.74	23.35	43.7%	55.0%	60.6%
	Circle	2480	22.23	25.01		-	-
	Fort Peck Power Plant	2070	25.37	28.16		-	-
	Vida	2400	21.74	24.65		-	-
Meagher	Lennep	5880	11.93	14.38	57.3%	70.4%	78.3%
	Martinsdale	4800	15.19	17.73		-	-
	White Sulpher Spr	5060	16.41	18.89		-	-
Mineral	St Regis Ranger Stn	2680	17.61	20.05	56.1%	63.3%	63.6%
	Superior	2710	21.94	24.54		-	-
Missoula	Lindbergh Lake	4320	14.63	17.22	69.5%	67.5%	69.4%
	Missoula	3420	18.85	21.49		-	-
	Missoula WSO AP	3199	19.45	21.89		-	-
	Potomac	3620	14.05	16.26		-	-
	Seeley Lake Ranger Station	4100	14.86	17.31		-	-
usselshell	Melstone	2920	24.22	27.17	50.0%	58.7%	56.2%
	Roundup	3386	23.98	26.79		-	-
Park	Cooke City	7460	8.68	11.63	56.9%	66.1%	67.5%
	Gardiner	5275	22.46	24.70		-	-

	Livingston	4870	16.59	19.41		-	-
	Livingston FAA AP	4656	18.63	21.39		-	-
	Wilsall	5840	13.20	16.01		-	-
etroleum	Flatwillow	3133	22.27	25.01	44.0%	50.0%	43.2%
Phillips	Content	2340	21.15	23.97	54.7%	54.7%	54.9%
	Malta 35	2650	20.28	22.99		-	-
	Malta 7	2262	21.61	24.39		-	-
	Port of Morgan	2830	20.15	22.72		-	-
	Saco	2180	20.13	22.70		-	-
	Zortman	4660	14.38	17.40		-	-
ondera	Conrad	3550	16.93	19.42	71.4%	81.0%	83.7%
	Valier	3810	18.31	20.96		-	-
Powder River	Biddle	3597	21.87	24.66	38.5%	49.3%	53.3%
	Broadus	3032	23.03	25.69		-	-
	Moorhead	3220	23.72	26.42		-	-
	Sonnette	3900	18.32	20.96		-	-
Powell	Deer Lodge	4678	13.14	15.32	77.6%	90.0%	100.0%[1]
	Ovando	4109	12.28	14.43		-	-
Prairie	Mildred	2510	22.92	25.58	59.6%	73.6%	84.3%
	Terry	2248	22.82	25.47		-	-
	Terry 21	3260	18.65	21.34		-	-
Ravalli	Darby	3880	18.91	21.44	79.5%	88.6%	96.1%
	Hamilton	3529	19.93	22.34		-	-
	Stevensville	3380	19.19	21.44		-	-
	Sula	4475	12.09	14.42		-	-
	Western Ag Research	3600	19.82	22.15		-	-
Richland	Savage	1990	23.61	26.59	56.0%	72.9%	88.4%
	Sidney	1931	22.49	25.45		-	-
oosevelt	Bredette	2638	19.99	22.86	46.5%	64.9%	74.6%
	Culbertson	1942	20.84	23.73		-	-
	Wolf Point	1985	24.16	27.03		-	-
Rosebud	Birney	3160	24.57	27.29	47.7%	67.7%	72.7%
	Brandenberg	2770	23.83	26.52		-	-
	Colstrip	3218	23.32	26.10		-	-
	Forsythe	2520	25.17	28.04		-	-
	Ingomar	2780	23.18	25.83		-	-
	Rock Springs	3020	21.35	23.93		-	-
Sanders	Heron	2240	14.82	17.73	58.8%	69.1%	62.8%
	Thompson Falls Power	2380	22.49	25.36		-	-
	Trout Cr Ranger Station	2356	16.60	19.40		-	-
Sheridan	Medicine Lake	1975	21.64	24.49	44.8%	68.5%	80.7%
	Plentywood	2063	20.64	23.48		-	-
	Raymond Border Station	2384	19.13	22.04		-	-
	Redstone	2300	17.86	20.58		-	-
	Westby	2120	18.10	21.033		-	-
ilverbow	Butte FAA AP	5545	14.73	17.06	68.8%	90.3%	93.6%
	Divide	5350	15.25	17.58		-	-
Stillwater	Columbus	3602	22.31	25.09	46.5%	62.9%	72.5%
	Mystic Lake	6544	13.57	16.57		-	-
	Nye	4840	15.00	17.93		-	-
	Rapelje	4125	20.35	23.07		-	-
Sweet Grass	Big Timber	4100	20.60	23.47	44.7%	53.6%	49.4%
	Melville	5370	12.83	15.49		-	-

Teton	Blackleaf	4240	14.74	17.34	68.8%	80.2%	88.4%
	Choteau Airport	3845	20.53	23.07		-	-
	Fairfield	3980	19.10	21.76		-	-
	Gibson Dam	4724	13.57	16.22		-	-
Toole	Goldbutte	3498	16.30	18.96	51.8%	66.5%	70.8%
	Sunburst	3610	18.74	21.46		-	-
	Sweetgrass	3466	18.22	21.22		-	-
Treasure	Hysham	2660	25.01	27.78	53.4%	75.2%	91.5%
Valley	Glasgow WSO AP	2293	23.48	26.12	57.9%	66.6%	74.9%
	Hinsdale	2670	22.18	25.25		-	-
	Opheim 10	2878	16.19	18.86		-	-
	Opheim 16	3258	16.73	19.34		-	-
Wheatland	Harlowton	4162	17.83	20.56	46.6%	58.7%	54.4%
	Judith Gap	4573	13.77	16.40		-	-
Wibaux	Carlyle	3030	19.87	22.75	See appropriate adjacent county	-	-
	Wibaux	2696	18.69	21.50		-	-
Yellowstone	Billings Water Plant	3097	26.16	28.92	59.5%	71.4%	77.8%
	Billings WSO	3648	25.49	28.22		-	-
	Huntley Exp Station	3034	21.92	24.61		-	-

[1]The 1997-2006 county management factor was calculated to be slightly greater than 100%, therefore the 1997-2006 Management Factor is set to 100%.

(17) In addition to the amount determined by the methodology described in (14) and (15), the department will add the following consumptive loss components to account for irrecoverable losses at the field:

(a) 5% of the volume applied to the field for flood systems; and

(b) 10% of the volume applied to the field for sprinkler systems.

AUTH: 85-2-112, 85-2-113, 85-2-302, MCA
IMP: 85-2-302, 85-2-401, 85-2-402, 85-2-407, 85-2-408, 85-2-436, MCA

REASONABLE NECESSITY: The department determines the historic consumptive use for an application to change water rights by implementing a methodology that calculates the net irrigation requirement using the Natural Resources and Conservation Services Irrigation Water Requirements (NRCS IWR) Program. Column F provides for historic consumptive use for water rights that existed pre-July 1, 1973. Column G would provide for historic consumptive use for those appropriations that existed post-July 1, 1973.

The department applies a management factor when determining historic consumptive use to provide a reasonable estimate of actual crop use. In order to get a reasonable comparison for a new proposed use under a change, a "modern" management factor, Column H, should be considered. This "modern" management factor was generated using the same methodology used for columns F and G. A ten-year base period provides consistency with the pre-July 1, 1973, historic use management factors. Based on National Agricultural Statistics Service (NASS) data availability, the most appropriate continuous period for a modern management factor is 1997 through 2006.

There are irrecoverable evaporative losses at the field associated with irrigation systems that are not accounted for in ARM 36.12.1902(14) and (15). These evaporative losses are a factor of relative humidity, wind speed, temperature, and system design. The percentages identified in (17) were developed based on existing documentation quantifying irrecoverable losses for flood and sprinkler irrigation. After a correct and complete determination, the applicant may submit additional information for the department to consider in order to modify those percentages.

4. The rule as proposed to be adopted provides as follows:

NEW RULE I TEMPORARY LEASE OF APPROPRIATION RIGHT

(1) An appropriator wishing to temporarily lease a water right must file an application to

temporarily lease an appropriation right (Form 650). An application may only be filed by the owner of the water right as recorded in the department's water rights records.

(2) A place of use may not be retired for lease purposes more than two years within any consecutive ten-year period, though that place of use may have multiple water rights that could be leased separately.

(3) The applicant must provide evidence that the water right has been used within the five years prior to the date an application is filed. Evidence of use under this subsection includes, but is not limited to the following:

(a) dated photographs or aerial imagery demonstrating irrigation at the place of use;

(b) notarized affidavit(s); or

(c) power bills, if the conveyance system includes a pump.

(4) The department will use the following standards for consumptive use when reviewing applications for temporary leases:

(a) for irrigation, consumptive use is 1.0 acre-foot per acre irrigated as defined in 85-2-427, MCA;

(b) for domestic use by one household, consumptive use is 0.1 acre-foot per year based on ten percent of 1.0 acre-foot per year of water for year-round use;

(c) for lawn and garden, shrubbery, and shelterbelts, consumptive use is 1.5 acre-feet per acre per year based on 60 percent of 2.5 acre-feet per acre per year;

(d) for stockwater, consumptive use is 15 gallons per day or 0.017 acre-foot per year per animal unit based on ARM 36.12.115. Animal unit equivalencies for water consumption are set out in ARM 36.12.101 and the water conversion table, Form No. 615; and

(e) other consumptive uses not covered in this subsection will be determined by the department.

(i) An application for consumptive uses not set forth in (4)(a) through (d) must include a completed waiver of timelines form signed by the applicant.

(ii) The department will make a determination with regard to consumptive uses not set forth in (4)(a) through (d) within 90 days of the date the application is received.

(5) An application must include a written narrative addressing the applicant's plan to prevent potential adverse effects to existing water rights, certificates, permits, and water reservations, including any mitigation to prevent adverse effect.

(a) The applicant's plan must demonstrate:

(i) the operation of the proposed lease will not exceed historic use, including flow rate, historic diverted volume, and historic consumptive volume; and

(ii) the proposed lease is capable of being implemented and operated to prevent adverse effect.

(b) The applicant's plan must document the effects to other water rights including the following:

(i) water rights using the same point of diversion;

(ii) other ditch users;

(iii) the effect to water rights dependent on the return flow; and

(iv) the effects of changing the historic diversion pattern including rate and timing of depletions.

(c) The applicant's plan must describe any mitigation that will be used to prevent adverse effect to existing water rights, certificates, permits, and water reservations.

(6) If the approved temporary lease is for two years and the years are not consecutive, the applicant must notify the department in writing prior to the commencement of the second year of the lease.

AUTH: 85-2-113, 85-2-427, MCA
IMP: 85-2-427, MCA

REASONABLE NECESSITY: The 2013 Legislature passed HB 37 which will be codified as 85-2-427, MCA (Chapter 236, 2013 Laws of Montana). HB 37 created a mechanism for water right holders to temporarily lease their water rights and provided for rulemaking by the department to implement the statute, including specifically: "...definitions of consumptive uses and criteria for determining if an appropriation right has been used in the five years prior to the temporary lease application".

5. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted in writing to Millie Heffner,

Department of Natural Resources and Conservation, P.O. Box 201601, 1424 Ninth Avenue, Helena, MT 59620; fax (406) 444-0533; or e-mail mheffner@mt.gov, and must be received no later than 5:00 p.m. on July 5, 2013.

6. Martin Balukas, Department of Natural Resources and Conservation, has been designated to preside over and conduct the public hearing.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding conservation districts and resource development, forestry, oil and gas conservation, trust land management, water resources, or a combination thereof. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Lucy Richards, P.O. Box 201601, 1625 Eleventh Avenue, Helena, MT 59620; fax (406) 444-2684; e-mail lrichards@mt.gov; or may be made by completing a request form at any rules hearing held by the department.

8. An electronic copy of this proposal notice is available through the department's web site at http://www.dnrc.mt.gov. The department strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsors were contacted by e-mail or U.S. Postal Service on May 24, 2013.

/s/ John E. Tubbs
JOHN E. TUBBS
Director
Natural Resources and Conservation

/s/ Brian Bramblett
BRIAN BRAMBLETT
Rule Reviewer

Certified to the Secretary of State on May 28, 2013.